REMARKS

Prior to entry of this response, Claims 1-38 were pending in this application. By this response, no claims are added, canceled, or amended. Hence, Claims 1-38 are pending in the application upon entry of this response.

SUMMARY OF THE REJECTIONS/OBJECTIONS

Claims 1-38 were rejected under 35 U.S.C. § 102(e) as allegedly anticipated by Ferguson et al. (*"Ferguson"*; U.S. Patent No. 6,976,079).

THE REJECTION BASED ON THE PRIOR ART

Rejection under 35 U.S.C. §102(e)

Claims 1-38 were rejected under 35 U.S.C. § 102(e) as allegedly anticipated by Ferguson et al. (*"Ferguson"*; U.S. Patent No. 6,976,079). This rejection is traversed on the basis that a prima facie case of anticipation is not established based on *Ferguson*, as shown hereafter.

Generally, **Claim 1** involves a method for reconfiguring an application without restarting the computer system on which the application executes, in which new requests are serviced based on a second configuration of an application concurrently with servicing existing requests based on a first configuration of the application. *Ferguson* discloses a method for updating a program while permitting the application server on which the program is stored to continue to service requests for *other* programs (Abstract), i.e., selectively redirecting only client sessions for the to-be-updated program.

However, rather than concurrently servicing requests using two different configurations of the same application, as with Claim 1, the application server of *Ferguson* is prevented from receiving any new requests for the program that needs to be updated, waits for pending requests

for that program to be serviced to completion by the to-be-upgraded version of the program, and then, after acknowledging completion of upgrading of the program, permits the application server to receive new requests for the updated program (col. 3, lines 51-65). Thus, there is never any period of time in which the application server of *Ferguson* provides for servicing requests for a particular program concurrently by two different configurations or versions of the *same* program as with Claim 1, because the application server of *Ferguson* stops receiving and servicing new requests for the program for the period of time during which the program is being updated.

In fact, *Ferguson* explicitly states that "the TBU [to-be-upgraded] software cannot be upgraded if the TBU application server is still supporting active client requests for the TBU software" (col. 5, lines 44-46; emphasis added) and that "[w]hen the TBU application server is no longer servicing a request for the TBU software, the TBU software program is no longer in use and is ready to be upgraded" (col. 5, lines 50-52; emphasis added). Thus, the disclosure of *Ferguson* is in clear contrast to the embodiment recited in Claim 1. The embodiment of Claim 1 obviates the need to completely shut down the to-be-updated application and, therefore, obviates the need to stop servicing requests for the application while the application is being updated by, generally, maintaining and using different configurations of an application concurrently for servicing different requests.

Based at least on the foregoing fundamental distinctions between the teachings of *Ferguson* and that which is recited in Claim 1, Claim 1 is shown to be not anticipated by *Ferguson*. Therefore, reconsideration and withdrawal of the rejection of Claim 1 under 35 U.S.C. § 102(e) is respectfully requested.

Independent **Claims 20 and 38** recite similar limitations as in Claim 1 and, therefore, these claims are patentable over the cited reference of record for at least the same reasons

discussed herein in reference to Claim 1. Independent **Claim 19** recites similar subject matter as in Claim 1, generally regarding concurrently processing requests for application services based on two different configurations (i.e., former configuration and current configuration) of the same application. Hence, Claim 19 is patentable over the cited reference of record for at least the same reasons discussed herein in reference to Claim 1.

Claims 2-13 depend from Claim 1 and **Claims 21-31** depend from Claim 20. Hence, each of these claims is patentable over the cited reference of record for at least the same reasons discussed herein in reference to the independent claim from which it respectively depends. Therefore, reconsideration and withdrawal of the rejection of Claims 2-13 and 21-31 under 35 U.S.C. § 102(e) is requested.

Furthermore, each of Claims 2-13 and 21-31 recites at least one additional feature that makes it separately patentable over the cited reference of record. Due to the fundamental distinctions between the independent claims and the teachings of *Ferguson* already described, discussion of these additional patentable features recited in the dependent claims is foregone at this time. However, the rejection of these dependent claims is collectively traversed and no statements of official notice, overarching allegations of obviousness, or allegations of well-known features that may be present in the Office Action are stipulated to or admitted as prior art features, and the right to separately argue such features in the future is not disclaimed.

Independent **Claims 14 and 32** recite, among other limitations, a manner in which different requests for an application service at different times are associated with different configurations of the same application via use of a global variable, e.g., by storing pointers to each respective data structure storing corresponding configuration information for the different configurations. By contrast, the cited portion of *Ferguson* on which the Office Action relies for the rejection of these claims discusses a mapping of each application to each application server

on which the application runs, i.e., a Server List (col. 5, lines 1-4). A global variable used to associate a service request with a particular application configuration is simply not the same as a mapping between applications and servers on which the applications run. *Ferguson* does not teach or fairly suggest using the Server List mapping of applications to servers for the purpose of associating a request with an application configuration. *Ferguson* does discuss another mapping of each active request to each application, i.e., a Session List (col. 4, lines 59-61). However, *Ferguson* does not teach or fairly suggest using the Session List mapping to map requests to different configurations of the same application. For these reasons, neither use of the Server List nor use of the Session List discussed in *Ferguson* anticipate use of the global variable in Claims 14 and 32. Therefore, reconsideration and withdrawal of the rejection of Claims 14 and 32 under 35 U.S.C. § 102(e) is requested.

Claims 15-18 depend from Claim 14 and **Claims 33-37** depend from Claim 32. Hence, each of these claims is patentable over the cited reference of record for at least the same reasons discussed herein in reference to the independent claim from which it respectively depends. Therefore, reconsideration and withdrawal of the rejection of Claims 15-18 and 33-37 under 35 U.S.C. § 102(e) is requested.

Furthermore, each of Claims 15-18 and 33-37 recites at least one additional feature that makes it separately patentable over the cited reference of record. Due to the fundamental distinctions between the independent claims and the teachings of *Ferguson* already described, discussion of these additional patentable features recited in the dependent claims is foregone at this time. However, the rejection of these dependent claims is collectively traversed and no statements of official notice, overarching allegations of obviousness, or allegations of well-known features that may be present in the Office Action are stipulated to or admitted as prior art features, and the right to separately argue such features in the future is not disclaimed.

CONCLUSION

For the reasons set forth above, it is respectfully submitted that all of the pending claims (1-38) are in condition for allowance. Therefore, the issuance of a formal Notice of Allowance is believed next in order, and that action is most earnestly solicited.

The Examiner is respectfully requested to contact the undersigned by telephone if it is believed that such contact would further the examination of the present application.

Please charge any shortages or credit any overages to Deposit Account No. 50-1302.

Respectfully submitted,
HICKMAN PALERMO TRUONG & BECKER LLP

Date: 7/17/06

John D. Henkhaus
Reg. No. 42,656

2055 Gateway Place, Suite 550
San Jose, CA 95110-1089
(408) 414-1080
Facsimile: (408) 414-1076

CERTIFICATE OF MAILING
I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Mail Stop AF, Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450

on 7/17/06 by _____
Darci Sakamoto